

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

LINDA HENNING,

Petitioner,

vs.

No. CIV 08-328 RB/LFG

ALLEN COOPER, Warden, and the
ATTORNEY GENERAL OF THE
STATE OF NEW MEXICO,

Respondents.

**ORDER DENYING PETITIONER'S MOTION FOR EXTENSION
OF TIME FOR CERTIFICATE OF APPEALABILITY AND GRANTING
TIME TO REVISE MOTION TO ALTER OR AMEND**

THIS MATTER comes before the Court on Petitioner Linda Henning ("Henning")'s "Motion for Extension of Time to File Certificate of Appealability" [Doc. 43], filed September 23, 2009. No response is necessary.

Judgment was entered in this case on September 4, 2009. [Doc. 35]. As set forth in the Court's Order [Doc. 41] of September 23, 2009, a document submitted to the Court by Henning was construed by the District Court Clerk's office as a Notice of Appeal. The United States Court of Appeals for the Tenth Circuit accepted the appeal and docketed it as Cause No. 09-2224.

Unaware that the Magistrate Judge's Report and Recommendation had been adopted by the Court and that Judgment had already been entered, Henning filed an Addendum [Doc. 38] to her objections to the Report and Recommendation on September 17, 2009. On September 21, 2009, Henning filed a motion [Doc. 40], asking the Court to do three things: (1) mail her copies of Document Nos. 34, 35 and 36, which she says she never received; (2) grant her an extension of time to file a notice of appeal or a motion for reconsideration; and (3) "return" the Addendum to her, as she needed it in order to prepare the request for reconsideration.

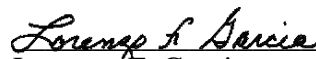
The Court entered an Order [Doc. 41] on September 23, 2009, granting Henning's motion in part, to the extent she asked for copies of Docs. 34, 35, and 36. The Court directed the Clerk to mail copies of these documents to Henning, and also to mail her a copy of her own Addendum. The Court denied the motion to the extent Henning was asking for an extension of time to appeal or request reconsideration, since the appeal had already been docketed in the Tenth Circuit and this Court was divested of jurisdiction to take action in this case, other than action on matters collateral to the appeal.

Meanwhile, also on September 23, the Tenth Circuit issued an Order abating Henning's appeal in Cause No. 09-2224. The Court of Appeals construed Henning's Addendum [Doc. 38] as a motion to alter or amend judgment under FED. R. CIV. P. 59 and ordered that the appeal be abated until the District Court resolved that motion. The Court of Appeals further directed the parties and the District Court to submit a notification once the Motion is resolved, and held that the time for filing a Notice of Appeal will expire 30 days from the date of this Court's ruling on the motion to alter or amend judgment.

Order

IT IS THEREFORE ORDERED that Petitioner's "Motion for Extension of Time to File Certificate of Appealability" [Doc. 43] is denied as moot, as there is no pending deadline for filing a petition for certificate of appealability, given the current posture of this case.

IT IS FURTHER ORDERED that, as directed by the Tenth Circuit, this Court will treat Petitioner's Addendum [Doc. 38] as a motion to alter or amend judgment under Rule 59. If Henning wishes to amend or revise that motion, she will have until October 30, 2009 to do so. Respondents will have until November 16, 2009 to serve and file a Response. Petitioner's Reply will be due 14 days after service of the Response.



Lorenzo F. Garcia
Chief United States Magistrate Judge